

REMARKS

Claims 1-6, 8-13, 15-17, 19-24 and 26-39 are pending in the application. Claims 1-6, 8-13, 16-17, 18-24 and 26-30 were rejected under 35 U.S.C. §102(e) over Wireless Commerce Ltd. international application number WO 00/22907 ("WCL"). Claims 7, 14, 15, 25, and 31-39 were rejected under 35 U.S.C. §103(a) over WCL in view of Aggarwal et al. patent number US 6,151,589 ("Aggarwal '589").

Claims 7, 14, 18 and 25 were previously canceled, therefore, the rejection as to these claims is moot.

By this Amendment, claims 1, 3-5, 19, 21-23, and 32 have been amended.

A. 35 U.S.C. § 102(e) Rejections

1. Claims 1, 2, 6, 8-11, 19-20, 24, and 26-30.

Claims 1 and 19 have been amended to clarify which parties are subject to the factoring agreement. Each of claims 1 and 19 include the step of,

providing a guarantee via a factoring agreement **between the seller and a financial institution**, wherein the factoring agreement obligates the financial institution to pay at least a portion of the payment due from the winning buyer to the seller.

By this step, an auction may be provided, among other things, that advantageously offers the security and fraud-avoidance benefits that may accompany a factoring agreement.

Because the use of a factor instills a high degree of confidence in the auction, more sellers will be attracted to participate in the auction. As a result, the auction becomes more robust with more sellers competing and more commerce occurring.

In sharp contrast, the method of WCL is directed to the buyer's participation in an electronic auction. WCL describes an electronic auction wherein the products offered for sale are presented to potential buyers using a mass telecommunication media, such as a television broadcast. See, p.4, lns. 22-24. Using a mass telecommunication media enables the auction provider to create an entertaining auction program. See, p.4, lns. 27-28. The buyer can have immediate access to the auction by using a mobile communications system, such as a short message service of a mobile communication system or an authenticated internet connection, to participate in the auction and make offers on the products. See, p.4, ln. 33 - p.5, ln. 2; and p.5, lns. 14-16.

WCL describes a prior art auction wherein a buyer makes a payment guarantee on an offer by having a credit or debit account with a bank. See, p.1, lns. 32-33. "The buyer must ... have an agreement with a bank and the auction service provider for the payment of purchases." See, p.1, lns. 33-35 (emphasis added). The buyer's offer may be guaranteed by a general purpose account, such as a credit or debit account, that is

maintained by a bank. See, p.3, lns. 1-4. To address this issue, WCL discloses a method wherein the payment of the purchased products can be handled through the mobile communication system operator by having the purchase price added to the buyer's telephone bill. See, p.5, lns. 26-33; and p.9, lns 21-26. In this way, the process of WCL avoids the need for the buyer to have a payment guarantee on an offer by securing a payment agreement with the auction service or a bank. See, p.5, lns. 33-34; and p.13, lns. 6-7.

Accordingly, WCL describes a method of eliminating the buyer's relationship with the auction provider or bank to guarantee payment of the purchased goods. WCL does not mention or suggest any payment protection the seller may acquire via a factoring agreement. Hence, WCL does not disclose a guarantee via a factoring agreement between the seller and the financial institution, wherein the factoring agreement obligates the financial institution to pay at least a portion of the payment due from the winning buyer to the seller.

To anticipate a claim, a reference must teach every element of the claim as the elements are arranged therein. MPEP §2131.01. Since WCL fails to disclose a guarantee via a factoring agreement between the seller and the financial institution, or a factoring agreement between the seller and the financial institution wherein the factoring agreement obligates

the financial institution to pay at least a portion of the payment due from the winning buyer to the seller, claims 1, 19 and 32 cannot be anticipated thereby.

Claims 2, 6, and 8-11, depending on claim 1, should also be allowable in part as depending upon an allowable base claim. Further, claim 8 includes the step of wherein the at least one seller applies online for the guarantee by the financial institution prior to posting the goods or services for sale at the auction; and claim 11 includes the step wherein the financial institution receives commissions from the at least one seller in consideration for providing the guarantee, and wherein the auction manager receives a commission for each guarantee provided by the financial institution. Each of these steps is not disclosed or otherwise taught in WCL.

Claims 20, 24 and 26-30, depending on claim 19, should also be allowable in part as depending upon an allowable base claim. Further, claim 26 includes the step of wherein at least one seller applies online for the guarantee by the financial institution prior to posting the goods or services for sale at the auction; and claim 29 includes the step of wherein the financial institution receives commissions from the at least one seller in consideration for providing the guarantee, and wherein the auction manager receives a commission for each guarantee

provided by the financial institution. Each of these steps is not disclosed or otherwise taught in WCL.

2. Claims 3-5 and 21-23

Each of claims 3-5 and 21-23 have been amended to clarify which parties are subject to the factoring agreement. Each of claims 3-5 and 21-23 includes the steps of;

providing a guarantee by a financial institution to pay at least a portion of the payment due from the winning buyer to the seller;

wherein the guarantee is a ... factoring agreement **between the seller and the financial institution.**

As described above in Section A1, WCL fails to disclose or suggest a guarantee via a factoring agreement between the seller and the financial institution. Therefore, claims 3-5 and 21-23 are not anticipated thereby.

Also, claims 3 and 21 each includes the limitation wherein the guarantee is a single transaction factoring agreement. Such a limitation is not disclosed or otherwise taught by WCL.

Further, claims 4 and 22 each includes the limitation wherein the guarantee is a no-loan factoring agreement. Such a limitation is not disclosed or otherwise taught by WCL.

Moreover, claims 5 and 23 each includes the limitation wherein the guarantee is a loan factoring agreement. Such a limitation is not disclosed or otherwise taught by WCL.

3. Claims 12, 13 and 16-17

Claim 12 includes the steps of;

providing a guarantee by a financial institution to pay at least a portion of the payment due from the winning buyer to the seller;

wherein the at least one **seller applies for the guarantee by the financial institution** prior to posting the goods or services for sale at the auction.

As described above in Section A1, WCL fails to disclose or suggest a guarantee by a financial institution wherein the at least one seller applies for the guarantee by the financial institution. Hence, claim 12 is not anticipated by claim 12.

Claims 13, 16 and 17, depending on claim 12, should also be allowable in part as depending upon an allowable base claim.

B. 35 U.S.C. 103(a) Rejections

1. Claim 15

Claim 15 depends from claim 12 which includes the step of "wherein the at least one seller applies for the guarantee by the financial institution prior to posting the goods or services for sale at the auction." As discussed above in section A3, WCL does not disclose or suggest such a step.

Aggarwal '589 also fails to disclose such a step. Aggarwal '589 describes a method for performing repeated, continuous auctions over a computer network system, such as the internet, at time intervals that are dynamically adjusted. See, col. 2,

lns. 33-41 and col. 4, lns. 16-19. The seller provides information about the product for sale, the minimum bid price and the time limits for bids to be submitted. See, col. 2, lns. 46-49. Each buyer enters a bid and the duration for which the bid is valid. See, col. 2, lns. 49-51. The time interval to the next auction is determined by selecting premium buyers (those buyers whose bids are above a certain amount) and calculating a maximum time before which a certain percentage of premium buyer bids will not expire. See, col. 2, lns. 54-59. By considering these factors, auctions may be performed continuously that are fast enough so that most premium buyers are retained, while keeping the auction slow enough so that buyers bid against each other for a sufficient number of times. See, col. 5, lns. 49-52.

Therefore, Aggarwal '589 is directed to a method of conducting continuous auctions. Aggarwal '589 does not at all teach or suggest a seller applying for a guarantee by a financial institution at anytime, much less a seller applying for a guarantee prior to posting the goods or services for sale at an auction. As such, Aggarwal '589 does not at all provide the benefit of the claimed invention.

A *prima facie* case of obviousness requires that "the prior art reference (or references when combined) must teach or suggest all the claim limitations." MPEP §2142. Here, neither

WCL nor Aggarwal '589 disclose or suggest the step of wherein the at least one seller applies for the guarantee by the financial institution prior to posting the goods or services for sale at the auction. Thus, the combination of WCL and Aggarwal '589 fails to teach or suggest every element of claim 15. It is submitted that claim 15 is non-obvious and allowable.

Further, claim 15 includes the step wherein the at least one seller applies online for the guarantee by the financial institution. This step is also not described or suggested in WCL or Aggarwal '589.

2. Claim 31-34

Claim 31 depends from claim 1 which includes the step of "providing a guarantee via a factoring agreement between the seller and a financial institution, wherein the factoring agreement obligates the financial institution to pay at least a portion of the payment due from the winning buyer to the seller." Claim 32 also includes this element.

As discussed above in section A1, WCL does not disclose or suggest such a step. Also, as discussed in section B1, Aggarwal '589 fails to disclose or suggest such a step. Thus, a *prima facie* case of obviousness cannot be made because the combination of WCL and Aggarwal '589 does not include all the elements of claim 31.



Also, claim 31 includes the step wherein the guarantee by the financial institution extends to the auction and a second auction. It is submitted that such a step is also not described or suggested in WCL or Aggarwal '589.

Claims 33 and 34, depending on claim 32, should also be allowable in part as depending upon an allowable base claim. Claim 34 further includes the step of wherein the plurality of auctions are conducted simultaneously. Neither WCL nor Aggarwal '589 disclose or suggest such a limitation. Aggarwal '589 describes a method for performing repeated, continuous auctions over a computer network system. See, col. 4, lns. 16-19. A continuous process operates in series, not simultaneously. Hence, Aggarwal '589 fails to disclose the step wherein the plurality of auctions are conducted simultaneously.

3. Claims 35-39

Claim 35 includes the steps of,

providing a plurality of factoring agreements to a **seller**, wherein the seller posts goods or services to be sold at the auction, and wherein each factoring agreement **guarantees the seller** payment of at least a portion of the funds due from a sale in the auction; and

**entering the seller into a factoring agreement.**

As described above in Section A1, WCL fails to describe or suggest the seller entering into a factoring agreement, or the seller entering into a factoring agreement wherein the factoring agreement guarantees the seller payment of at least a portion of

the funds due from a sale in the auction. WCL also fails to disclose or suggest providing a plurality of factoring agreements to a seller. As discussed in section B1, Aggarwal '589 also fails to disclose or suggest such a step. Thus, a *prima facie* case of obviousness cannot be made because the combination of WCL and Aggarwal '589 does not include all the elements of claim 35.

Claims 36-39, depending on claim 35, should also be allowable in part as depending upon an allowable base claim. Claim 36 further includes the step wherein the plurality of factoring agreements includes a single transaction factoring agreement, a no-loan factoring agreement, and a loan factoring agreement. Such a step is not disclosed or suggested in WCL or Aggarwal '589.

Further, claim 37 includes the step wherein the step of providing a plurality of factoring agreements to a seller is facilitated online; and claim 38 includes the step of binding the seller to a factoring agreement is facilitated online. Each of these steps is not disclosed or suggested in WCL or Aggarwal '589.

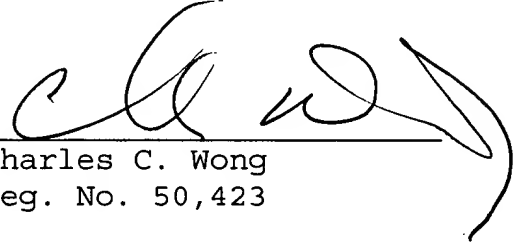
C. Conclusion

Therefore, it is respectfully submitted that claims 1-6, 8-13, 15-17, 19-24, and 26-39 are allowable and a Notice of Allowance is earnestly solicited. Should the Examiner believe that issues remain as to the allowability of the pending claims, it is requested that the Examiner contact the undersigned at (213) 489-3939.

Respectfully submitted,

JONES DAY

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By:   
Charles C. Wong  
Reg. No. 50,423

555 West Fifth Street, Suite 4600  
Los Angeles, California 90013-1025  
(213) 489-3939